CF0000110040

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR
M.P.NO. 3942 OF 1989

Division Bench (Civil)

Petitioner : Hiramani Shukla
S/o Sh. Raghunath Prasad Shukla,
Aged about 38 years, Branch Manager,
Branch Beltara, Tahsil and
District Bilaspur (MP)

Attested
27/4/06
A.R(3)
Amended as per
Hon'ble Court Order
dated on: 17/4/2006.

Versus

Respondents : The Chairman
Bilaspur-Raipur Kshetriya Gramin
Bank, Bilaspur.

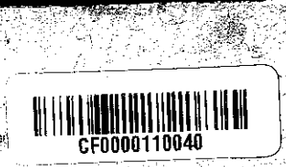
2. B.Y. Joglekar, Area Manager,
C/o Staff Training Centre,
S.B.I. Normal School Road,
Bilaspur.

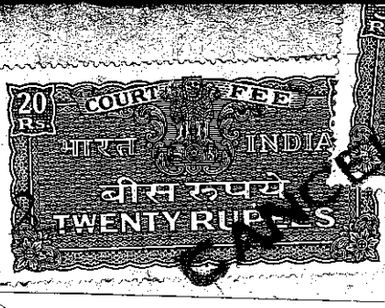
3. Shri S.K.Shrivastava,
Senior/Area Manager,
C/o Bilaspur-Raipur Kshetriya
Gramin Bank, Bilaspur.

4. Shri D.K. Soni,
Area/Senior Manager,
C/o Bilaspur-Raipur Kshetriya
Gramin Bank, Bilaspur.

5.

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA.





M. Ramprasad, son of Unknown, aged about 43 years, working as Senior Manager, Head Office, Bilaspur Raipur Kshetriya Gramin Bank, Gurduwara Dayalband, Bilaspur.

B.G. Parmanand, son of Unknown, aged about 45 years, working as Senior Manager, Head Office, Bilaspur Raipur Kshetriya Gramin Bank, Gurduwara Dayalbhand, Bilaspur.

3. Shri S.K.Shrivastava,
c/o Shri S.R. Sao, Line Man,
Budhi Mohalla, House No. 11,
Ward No. 11, Near Railway
Gate, Balaghat (M.P.).

4. Shri D.K.Soni,
Bilaspur Raipur Kshetriya
Gramin Bank, Head Oficer
Nehru Complex, Phase I, BDA
Building, Vyapar Vihar,
Bilaspur (C.G.)

5. Shri M.Ramprasad,
Bilaspur Raipur Kshetriya
Gramin Bank, Head Oficer,
Nehru Complex, Phase I, BDA
Building, Vyapar Vihar, Bilaspur (C.G)

6. B.G.Parmanad,
Region Office, Bilaspur Raipur
Kshetriya Gramin Bank LIG
37, Near Children Park, Sector-1
Shankar Nagar, Raipur (C.G.)

AFR

(238)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 3942 of 1989

Petitioner : Hiramani Shukla

Versus

Respondents : The Chairman Bilaspur-Raipur Kshetriya Gramin Bank, Bilaspur and others

Post for order on 17th November, 2006

Sd/-
Satish K. Agnihotri
Judge

239

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 3942 of 1989

Petitioner : Hiramani Shukla

Versus

Respondents : The Chairman Bilaspur-Raipur Kshetriya Gramin Bank, Bilaspur and others

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri.**

Shri Sanjay K. Agrawal, counsel for the Petitioner.
Shri P.K. Bhaduri, counsel for the Respondent No. 1.
Shri B.P. Gupta, counsel for the Respondent No. 2.
None appears for the respondents No. 3 to 6.

ORDER

(17th November, 2006)

1. In the present writ petition, the petitioner has sought for his proper placement above the respondent No. 2 in the seniority list and subsequent promotions thereafter to various posts on the basis of seniority list.

2. The undisputed facts in nutshell are that, by order dated 21.11.1977 (Annexure/A), the petitioner was appointed as Branch Manager, wherein it was provided that the appointment would come into effect from the date the petitioner submitted his joining report in the concerned branch. Thereupon the order dated 1.12.1977 (Annexure/B) was issued whereby the petitioner was directed to join at Branch Jairam Nagar. It was reiterated that the appointment would come into effect from the

290

date of joining of the petitioner in the concerned branch. The petitioner accordingly joined at Jairam Nagar Branch of the respondent-Bank on 6.12.1977.

3. Similar order dated 4.11.1977 (Annexure R/2-B) was passed in case of the respondent No. 2 wherein the similar condition that the appointment would come into effect from the date the respondent No. 2 would submit his joining report, was stated in the order.

4. The letter dated 6.12.1977 (Annexure R-2/C) was issued to the respondent No. 2 whereby the respondent No. 2 was directed to join Ganiyari Branch with the same condition. Admittedly, the respondent No. 2 reported for duty at Ganiyari Branch on 9.12.1977. The respondent-Bank, by order dated 25.2.1982 (Annexure/E), confirmed the petitioner with effect from 12.12.1979 and the respondent No. 2 was confirmed with effect from 17.12.1979.

5. The seniority list dated 8.1.1987 (Annexure/H) was circulated wherein the respondent No. 2 found place at serial No. 1 and the petitioner found place at serial No. 14. Other respondents namely Shri S.K. Shrivastava was placed at serial No. 2, who was later on suspended, respondent No. 4 Shri D.K. Soni was placed at serial No. 10, respondent No. 5 was placed at serial No. 4 and respondent No. 6 was placed at serial No. 13.

6. Being aggrieved, the petitioner filed this petition on 14.6.1989 seeking a writ/direction to the respondent No. 1 to assign the

241

correct placement of the petitioner above the respondent No. 2, who is junior to the petitioner, in the seniority list. It was further prayed that the petitioner be treated as promoted to the post of Area Manager/Senior Manager with effect from 30.7.87 and the subsequent promotions thereafter.

7. Shri Sanjay K. Agrawal, learned counsel appearing for the petitioner would submit that during the period the petitioner and respondents No. 2 to 6 were appointed, there was no rules, regulations, circulars, notifications or executive instructions to determine inter-se seniority of the Branch Managers (Officers). Thus, the seniority of the petitioner ought to have been governed on the principle of seniority on the basis of length of service from the date of appointment.

8. Admittedly, the appointment orders issued to the petitioner and the respondent No. 2 to 6 clearly provide that the appointments would come into effect, from the date the candidate submitted his joining report in the concerned branch. The petitioner had submitted his joining report on 6.12.1977 whereas, the respondent No. 2 had submitted his joining report on 9.12.1977 and other respondents submitted their joining reports after the petitioner had joined the concerned branch. The petitioner was confirmed on 12.12.1979 prior to the date of confirmation of the respondents. Learned counsel appearing for the petitioner further submits that prior seniority be assigned to the petitioner above the respondent No. 2 with consequential benefit of promotions.

9. Shri P.K. Bhaduri, learned counsel appearing for the respondent No. 1 would submit, per contra, that in the select/merit list prepared on 20.12.1977 (Annexure R-2/A), the respondent No. 2 was placed at serial No. 2 and the petitioner was placed at serial No. 25, wherein it was clearly stated that the orders of appointment was issued in accordance with the select/merit list. Thus, the seniority list was prepared on the basis of select/merit list and there was no infirmity in the seniority list. The date of appointment is the date of joining in the concerned branch and as such the placement in the select/merit list is relevant for assigning the seniority.

10. Shri B.P. Gupta, learned counsel appearing for the respondent No. 2 would adopt the submissions made by learned counsel appearing for the respondent No. 1.

11. The respondents No. 3 to 6, despite notice, did not choose to appear in the matter.

12. I have heard learned counsel for the parties and perused the records appended to the petition as well as to the returns filed by the respondents No. 1 and 2.

13. It is clearly evident that the appointment orders issued in favour of the petitioner and the respondent No. 2 clearly provide that the appointment would come into effect, with effect from the date of the candidates' submitting joining report in the concerned branch. The relevant portion of the appointment order reads, as under :-

293

"यदि आपको उपरोक्त शर्तें मंजूर हैं तब आप इस पत्र की डुप्लीकेट प्रति पर हस्ताक्षर कर इस कार्यालय में दे। इसके साथ ही पेरा 4 एवं 5 में उल्लिखित कागजात प्रस्तुत करें, जिससे आपकी अस्थायी नियुक्ति की जा सके। आपकी नियुक्ति उस समय से प्रभावशील होगी जब आप संबंधित शाखा में रिर्पोट करेंगें।"

14. The date of joining of the petitioner and the respondent No. 2 is not in dispute as aforementioned. Thus, on bare reading of the appointment orders looking into the date of joining in the concerned branch, it is apparent that the length of service of the petitioner is more than the length of service of the respondent No. 2. The so-called select/merit list has no relevance, as in the appointment orders issued pursuant to the select list, it was clearly provided that the appointment would come into effect on joining the concerned office (branch). It is also not in dispute that BILASPUR RAIPUR KSHETRIYA GRAMIN BANK Staff Service Regulations, 1980, wherein Regulation 13 (2) Chapter 13 provided that the inter-se seniority of officers or employees directly recruited in a batch to any grade or scale shall be reckoned with reference to the rank allotted to them at the time of such recruitment, came into force on 1st July, 1980. These regulations cannot be made retrospectively applicable to the appointment of the petitioner and the respondent No. 2 to 6. It is also admitted that there was no rules, regulations, circulars, executive instructions, notifications or any other memo governing inter-se seniority of the officers in existence at the relevant time. In that event, the general principle of law of the seniority would be applicable in the case in hand.

244

15. In the case of **Ashok Gulati and others Vs. B.S. Jain and others**[1], the Supreme Court observed in para 22, as under :-

> "22. According to the accepted canons of service jurisprudence, seniority of a person appointed must be reckoned from the date he becomes a member of the service. The date from which seniority is to be reckoned may be laid down by rules or instructions (a) on the basis of the date of appointment (b) on the basis of confirmation (c) on the basis of regularisation of service (d) on the basis of length of service, or (e) on any other reasonable basis. It is well settled that an ad hoc or fortuitous appointment on a temporary or stop-gap basis cannot be taken into account for the purpose of seniority even if the appointee was qualified to hold the post on a regular basis; as such temporary tenure hardly counts for seniority in any system of service jurisprudence....."

16. In the case of **H.V. Pardasani and others Vs. Union of India and others**[2], the Supreme Court observed that in the absence of any special provision regulating determination of seniority, length of continuous service in any particular grade would be the basis for determining seniority in that grade. Further in the case of **Nirmal Kumar Choudhary and others Vs. State of Bihar and others**[3], the Supreme Court observed that it is well settled position in law that seniority would ordinarily depend upon length of service subject, of course, to rules holding the field.

17. The Supreme Court in the case of **K.V. Subba Rao and others Vs. Government of Andhra Pradesh and others**[4] observed that the legal position is well settled that the State is entitled to

prescribe the manner of computing inter se seniority and in the absence of such prescription length of service is the basis.

18. In the case of **P. Mohan Reddy Vs. E.A.A. Charles and others**[5], the Supreme Court observed in para 17, as under :-

> "17. A conspectus of the aforesaid decisions of this Court would indicate that even though an employee cannot claim to have a vested right to have a particular position in any grade, but all the same he has the right of his seniority being determined in accordance with the Rules which remained in force at the time when he was borne in the Cadre. The question of re-determination of the seniority in the cadre on the basis of any amended criteria or Rules would arise only when the amendment in question is given a retrospective effect....."

19. In the case of **Pramod K. Pankaj Vs. State of Bihar and others**[6], the Supreme Court further held that in absence of any statutory provision or rules made thereunder or under the proviso appended to Article 309 of the Constitution of India, it is trite, that once an incumbent is appointed to a post according to rules, his seniority has to be counted from the date of his appointment.

20. Shri P.K. Bhaduri, learned counsel appearing for the respondent No. 1 has relied on decisions of the Supreme Court in the cases of **Union of India Vs. H.R. Patankar and others**[7], **Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra and others**[8], **Chairman, Puri Gramya Bank and Another Vs. Anand Chandra Das and others**[9], **Pilla Sitaram Patrudu and others Vs. Union of India and others**[10]

246

and **Bimlesh Tanwar Vs. State of Haryana and others**[11] in all the cases cited above.

21. In the case of **Union of India Vs. H.R. Patankar and others** (supra), the main controversy involved was whether officers directly recruited through competitive examination would become senior over the officers promoted from the State Service, when the year of allotment was the same. The Supreme Court held that the gradation list must follow the enunciation of the appropriate principle of seniority by the Government and no principle of seniority can be implied from the inter se seniority fixed in such gradation list.

22. In the case of **Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra and others** (supra), the Constitutional Bench of the Supreme Court held that where appointment was made in accordance with rules, the seniority is to be counted from the date of such appointment and not from the date of confirmation. The dictum laid down by the Supreme Court is not applicable to the facts of the instant case as the question of law involved therein was whether the seniority has to be reckoned from the date of confirmation or from the date of initial appointment in accordance with law.

23. In the case of **Chairman, Puri Gramya Bank and Another Vs. Anand Chandra Das and others** (supra), it is not clear whether the seniority has to be determined on the basis of some rules or executive instructions. Thus, not relevant to the facts of the present case.

247

24. In the case of **Pilla Sitaram Patrudu and others Vs. Union of India and others** (supra), the seniority was determined on the basis of appointment according to the rules.

25. In the case of **Bimlesh Tanwar Vs. State of Haryana and others** (supra), the question under consideration was in the light of the rules available and applicable to the facts of the case. The Supreme Court observed in para 24, as under :-

> "24. The Rules, therefore, indisputably lay emphasis on merit. It for all intent and purport excludes the applicability of rule of appointment in terms of roster points".

26. In view of settled position of law as enunciated by the Supreme Court in various decisions in the case of availability of rules, regulations, executive instructions or memos etc., the inter se seniority has to be determined in accordance with the statutory/executive provisions. In absence of such provisions, the inter se seniority has to be determined on the basis of length of service.

27. In the present case, it is admitted fact that during the period, the petitioner and other respondents were appointed, there was no rules, regulations, notifications, circulars, executive instructions available and applicable to determine inter-se seniority of the officers and as such length of service would be the criteria for determination of inter-se seniority. The appointment orders issued by the respondent No. 1 in the present case clearly provide that the appointment would come

into effect from the date of joining of the office concerned. Thus, the petitioner is admittedly senior to all other respondents.

28. For the reasons stated-above, the respondent No. 1 is directed to assign the seniority to the petitioner above the respondent No. 2 and grant consequential benefits by re-determining the seniority flowing from this decision.

29. The writ petition is allowed to the above extent. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

---

[1]{1986 (Supp) SCC 597}
[2]{(1985) 2 SCC 468}
[3]{1988 (Supp) SCC 107}
[4]{(1988) SCC 201}
[5](AIR 2001 SC 1210)
[6]{(2004) SCC 723}
[7](AIR 1984 SC 1587)
[8]{(1990) 2 SCC 715}
[9]{(1994) 6 SCC 301]
[10]{(1996) 8 SCC 637}
[11]{(2003) 5 SCC 604}